STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Court of Appeals

Markey, P.J., and Fitzgerald and Owens, JJ.

LINDA HODGE,

Plaintiff-Appellant

-vs-

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee

Supreme Court 149043

COA Docket No. 308723

Wayne County No. 10-012109-AV

PLAINTIFF-APPELLANT'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

Richard E. Shaw (P33521)
Attorney for Plaintiff-Appellant
1880 Shepherds Drive
Troy, Michigan 48084
(248) 703-6424

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

STATEMENT REGARDING (1) PROCEDURAL POSTURE, (2) DECISION APPEALED FROM, (3) JURISDICTION, (4) GROUNDS FOR RELIEF, AND (5) RELIEF SOUGHT

Procedural Posture

This 1st-party, no-fault action was tried in the 36th District Court, resulting in a verdict in Plaintiff-Appellant's (Plaintiff) favor, followed by judgment. (Judgment on Jury Verdict, 10/1/10, Ex. D, 23a) Defendant-Appellee (Defendant) filed a claim of appeal to the Wayne Circuit Court; the circuit-appellate court reversed the judgment on the basis that the amount in controversy exceeded $25,000 despite the prayer for relief not to exceed that sum. (Order Granting Defendant's Appeal from Judgment and Reversing Judgment of Trial, 2/1/2012, Ex. E, 25a)

Plaintiff filed a timely application for leave to appeal to the Court of Appeals that was denied. However, this Court entered an order directing the Court of Appeals to hear the appeal. (Order, Appellate Docket No. 25, 3/4/2013, Ex. A, 5a)

The Court of Appeals affirmed the circuit-appellate court order on February 25, 2014, *Hodge v State Farm Mutual Automobile Insurance Co.*, *sub nom Moody v Home Owners Insurance Co.*, 304 Mich.App. 416, 849 N.W.2d 31 (2014) (Ex. F, 28a; Appellate Docket No. 63, 2/25/2014, Ex. A, 7a)

Plaintiff filed an application for leave to appeal. This Court held the application in abeyance (Appellate Docket No. 71, 9/26/14, Ex. A, 7a) and granted leave on February 4, 2015 (Appellate Docket No. 72, 2/4/15, Ex. A, 7a).

Order Appealed From

Plaintiff appeals from the Court of Appeals opinion. *Hodge v State Farm Mutual Automobile Insurance Co., sub nom Moody v Home Owners Insurance Co.*, 304 Mich.App. 416, 849 N.W.2d 31 (2014) (Ex. F, 28a).

Jurisdiction

This Court has jurisdiction to review this matter. MCR 7.301(A)(2).

Grounds for Relief

The issue raised by this application for leave to appeal involves legal principles of major significance to the state's jurisprudence. No prior appellate decision from the Court of Appeals holds that the district court is divested of jurisdiction, if evidence produced for the jury's consideration is more than the jurisdictional limit. In all other cases, although the plaintiff may present evidence of injuries beyond the district court's jurisdictional amount, a judgment is entered for the lesser of $25,000 or the jury verdict.

Although this litigation involved a 1st-party, no-fault claim, creditors routinely bring suit in the district court to expeditiously litigate their claim(s), foregoing some portion of their claim. The lower appellate court's decision bars a creditor from this choice. The lower court decision has ramifications well beyond the scope of a 1st-party, no-fault action.

The decision below is clearly erroneous as demonstrated in the legal argument *infra*, where it is seen that the decision below contradicted prior Michigan law.

Relief Sought

Plaintiff requests that this Court reverse the opinion, *Hodge v State Farm Mutual Automobile Insurance Co., sub nom Moody v Home Owners Insurance Co.*, 304 Mich.App. 415, 849 N.W.2d 31 (2014) (Ex. F, 28a).

STATEMENT OF THE QUESTIONS PRESENTED

ISSUE I

IS THE DISTRICT COURT'S JURISDICTION DETERMINED BY LOOKING AT THE ALLEGATIONS OF THE COMPLAINT WITHOUT REGARD TO THE PROOFS SUBMITTED DURING TRIAL?

The Court of Appeals answered:	No
The Circuit Court answered:	No
The District Court answered:	Yes
Plaintiff-Appellant answers:	Yes
Defendant-Appellee answers:	No

ISSUE II

IS A DISTRICT COURT DIVESTED OF SUBJECT-MATTER JURISDICTION WHEN A PLAINTIFF ALLEGES LESS THAN $25,000 IN DAMAGES IN THE COMPLAINT, BUT SEEKS MORE THAN $25,000 IN DAMAGES AT TRIAL, ON THE BASIS THAT THE AMOUNT ALLEGED IN THE COMPLAINT WAS MADE FRAUDULENTLY OR IN BAD FAITH?

The above repeats this Court's order granting leave to appeal, but no party or lower court has addressed this issue. Moreover, respectfully, Plaintiff-Appellant perceives no record facts to suggest that Plaintiff sought more than $25,000 at trial, or that the complaint was made fraudulently or in bad faith.

An alternative formulation of the issue is:

IS A DISTRICT COURT DIVESTED OF SUBJECT-MATTER JURISDICTION ON THE BASIS THAT THE AMOUNT ALLEGED IN THE COMPLAINT WAS MADE FRAUDULENTLY OR IN BAD FAITH WHEN:

(I) THE PLAINTIFF ALLEGES LESS THAN $25,000 IN DAMAGES IN THE COMPLAINT,

(II) THE PLAINTIFF IS WHOLLY COGNIZANT THAT AS A MATTER OF LAW HE/SHE WILL NOT RECEIVE A JUDGMENT THAT EXCEEDS $25,000;

(III) UNDERLYING FACTS (POTENTIAL DAMAGES OR "INJURIES") MIGHT LEAD TO A JUDGMENT THAT EXCEEDS $25,000 IF THE ACTION WERE BROUGHT IN A CIRCUIT COURT; BUT

(IV) THE PLAINTIFF FINDS IT BEST TO LITIGATE IN THE DISTRICT COURT?

Plaintiff-Appellant says "No."

Plaintiff-Appellant will not speculate regarding responses by the lower courts or Defendant-Appellee.

STATEMENT OF FACTS

This lawsuit involves a claim by the Plaintiff, Linda Hodge, against the Defendant, State Farm Mutual Insurance Company, for first party no-fault benefits arising out of a motor vehicle accident that occurred on January 15, 2005. Before the commencement of trial, Defendant filed a Motion in Limine to Preclude any Evidence of Claims Exceeding the Jurisdictional Limit and to Prevent the Jury from Awarding any Damages above the Jurisdictional Limit (attached to Appellee's Court of Appeals brief).[1] The District Court denied Defendant's Motion in Limine and the matter proceeded to trial that lasted until September 1, 2010. (Trial Vol. II excerpt, Ex. G, 43a)[2]

The jury found in Plaintiff's favor. It determined Plaintiff was entitled to $85,957.00 in unpaid allowable expenses. The jury awarded penalty interest on the unpaid medical bills. Following the jury verdict, the court reduced the award to the District Court jurisdictional limit of $25,000.00 plus interest. (Judgment on Jury Verdict, 10/1/2010, Ex. D)

Defendants appealed the judgment to the Wayne County Circuit Court and raised five (5) issues: (1) the district court erred when it permitted Plaintiff to submit proofs to the jury which exceeded the district court's jurisdictional limit of $25,000.00. (2) The

[1] "Defendant-Appellee, State Farm Mutual Automobile Insurance Company's Brief on Appeal in Docket No. 30723," Ex. 3 attached to Defendant's brief, 5/15/2013.

[2] The excerpt is that which was attached to Defendant's brief; Plaintiff refers to a few pages within the excerpt.

district court erred in determining that penalty interest was not included within the $25,000.00 jurisdictional limit; (3) The district court erred by denying Defendant's Motion for Directed Verdict as to some of the doctor's bills submitted by Plaintiff; (4) the district court abused its discretion by allowing Plaintiff to call State Farms' adjuster as a witness; and (5) the district court erred by denying Defendant's Motion for New Trial on the basis of improper comments by Plaintiff's counsel during closing argument.

On February 1, 2012, the Wayne County Circuit Court entered an order finding:

> 1. MCL 600.8301 provides that a district court has exclusive jurisdiction in civil actions when "the amount in controversy does not exceed $25,000.00." The statute expressly limits the authority of the district court to the amount in controversy to $25,000.00
>
> 2. The amount in controversy in this case was in excess of $25,000.00
>
> 3. A cause of action which exceeds the upper limit of the district court cannot be pursued in the district court because that court lacks jurisdiction to adjudicate the case. This defect cannot be remedied by the court's limitation of the damages to the maximum recoverable in the district court and no authority has been presented to this court which convinces it the district court can so proceed.
>
> IT IS HEREBY ORDERED that the jury verdict and subsequent judgment in the 35th District Court in this matter is reversed and vacated for the reason that the court lacked jurisdiction over the subject matter because the amount in controversy exceeded the district court's jurisdictional limits contained in MCL 600.8301.
>
> IT IS FURTHER ORDERED that the case is remanded to the 36th District Court for entry of an order dismissing the case for lack of jurisdiction; and
>
> IT IS SO ORDERED. [Order Granting Defendant's Appeal from Judgment and Reversing Judgment of Trial, 2/1/2012, Ex. E, 25a]

Subsequently, the district court entered an Order Dismissing the case for lack of Jurisdiction.[3] Plaintiff filed an Application for Leave to Appeal in the Court of Appeals from the February 1, 2012, Order of the Wayne County Circuit Court. On September 24, 2012, the Court of Appeals entered an Order denying leave to appeal for lack of merit in the grounds presented. (Appellate Docket No. 19, 9/24/2012, Ex. A, 5a)

Plaintiff appealed the September 24, 2012 Court of Appeals Order to the Michigan Supreme Court. On March 4, 2013, this Court remanded this case to the Court of Appeals as on leave granted. (Appellate Docket No. 27, 3/4/2013, Ex. A, 5a) The lower appellate court entered an order consolidating this case with *Moody et at v Home Owners Insurance Company*, Court of Appeals Docket Nos. 301783 and 301784. (Appellate Docket No. 40, 4/3/2013, Ex. A, 6a)

The Court of Appeals affirmed the Wayne Circuit Court *sub nom Moody et at v Home Owners Insurance Company*. (Appellate Docket No. 63, 2/25/2014, Ex. A, 28a)

Plaintiff filed an application for leave to appeal. This Court held the application in abeyance (Appellate Docket No. 71, 9/26/14, Ex. A, 71a) and granted leave on February 4, 2015 (Appellate Docket No. 72, 2/4/15, Ex. A, 72a).

[3] The district did not have jurisdiction to enter the order, since the matter had not been remanded to that court.

LAW AND ARGUMENT

ISSUE I

THE DISTRICT COURT HAD SUBJECT MATTER OF THIS CASE BY VIRTUE OF THE ALLEGATIONS IN THE COMPLAINT AND DID NOT LOSE JURISDICTION BY PLAINTIFF'S SUBMISSION OF DAMAGE CLAIMS IN EXCESS OF THE DISTRICT COURT'S JURISDICTIONAL LIMIT OF $25,000.

Standard of Review.

The standard of review regarding jurisdiction is *de novo*, inasmuch as an issue of law is presented. *Detroit City Council v. Detroit Mayor*, 283 Mich.App. 442, 449, 770 N.W.2d 117 (2009). This appeal also involves the interpretation of court rules; review is again *de novo*. *Plymouth v. McIntosh*, 291 Mich.App. 152, 804 N.W.2d 859 (2010).

Summary of Argument

Plaintiff's Issue I is presented in various parts, not necessarily in the order of significance.

A. The governing statute confers jurisdiction upon the district court with respect to cases where the amount in controversy does not exceed $25,000. To whatever degree recourse to any dictionary is appropriate, it should be a legal dictionary, because "amount in controversy" is a term of art. Additionally, the words must be construed in whole. *Black's Law Dictionary*, Fifth Edition, p 76, is dispositive. "Amount in controversy" means: "The damages claimed or relief demanded; the amount claimed or sued for." However, because the meaning of "amount in controversy" is fully explained by decisional authority, use of a dictionary is unwarranted.

B. Michigan and federal decisions hold that jurisdiction is determined by the amount requested or set forth in the prayer for relief. Numerous, undisputed decisions reveal judgments by the Michigan district court, notwithstanding that the potential damages ("injuries") exceed the jurisdictional amount. E.g., *Clohset v. No Name Corp.*, 302 Mich.App. 550, 8840 N.W.2d 375 (2012) ("Because subject-matter jurisdiction is determined by reference to the pleadings, * * *. The district court accordingly had jurisdiction over this case.") Federal cases explicitly hold that a plaintiff may deliberately request damages less than the federal jurisdictional amount to evade federal jurisdiction. E.g., *Iowa Central Ry. Co. v. Bacon*, 236 U.S. 305, 35 S.Ct. 357 (1915) ("In the petition it was alleged that the estate had been damaged in the sum of $10,000, but judgment was asked only for the sum of $1,990." The federal court's jurisdictional amount was over $2,000. The state court properly retained jurisdiction.) Prior to the decision below, no Michigan decision held that a district court is divested of jurisdiction to enter a judgment constrained by the jurisdictional limit even though a larger sum was awardable in the circuit court.

C. An analysis of the role of the *ad damnum* clause reveals the logic of Plaintiff's position. The prayer for relief is a self-imposed limitation binding Plaintiff to recover no more than $25,000. Analytically, there is no proper factual inquiry. "[H]aving sued for only $2,999.00, the appellant could not after judgment make any further claim under the policy." *Brady v. Indemnity Ins. Co. of North America*, 68 F.2d 302, 302 (6th Cir. Ky. 1933).

In *AKC, Inc. v. ServiceMaster Residential/Commercial Services Ltd.,* Memorandum Opinion (U.S.D.C., N.D. No. 1:13cv388 Oh. 5/6/2013) , after the defendant removed to federal court, the plaintiff filed a stipulation and declaration that its damages were less than $75,000. *Id.*, * 3. The federal court remanded, noting that the plaintiff's "stipulation binds it 'to a recovery of no more than this figure.'" *Id.*, * 5. The doctrine of judicial estoppel barred the plaintiff from recovering more than $75,000. *Id.* Since the demand for relief set a limit of $25,000, the amount in controversy is, *ipso facto*, limited to $25,000. There is simply no factual inquiry.

D. MCR 4.002 confirms the proposition that a district court has jurisdiction to enter a judgment for $25,000, although the plaintiff acknowledges that a court of unlimited jurisdiction would award damages exceeding of $25,000. The rule permits the plaintiff to move the district court for transfer to the circuit court, accompanying the motion with an affidavit demonstrating the potential for "relief of an amount or nature that is beyond the jurisdiction" of the district court. MCR 4.002(B)(1). The district court may deny the motion. Certainly the rule does not suggest that the action must be immediately dismissed; rather, the plaintiff will be limited to a judgment of $25,000. This rule starkly contradicts Defendant's argument that the district court is divested of jurisdiction to award $25,000.

Argument at Length

The district court had jurisdiction over this cause of action, where Plaintiff's claim – expressed in his prayer for relief – is limited to $25,000.00.

A. The governing statute conveys jurisdiction upon the District Court.

Subject-matter jurisdiction is "a court's power to hear and determine a cause or matter." *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Property Taxes*, 265 Mich.App. 285, 291, 698 N.W.2d 879 (2005), citing *Bowie v. Arder*, 441 Mich. 23, 36, 490 N.W.2d 568 (1992). Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state. MCL 600.605. MCL 600.8301 confers jurisdiction on the district court; it provides, in pertinent part:

> (1) The district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed $25,000.00.

The primary goal of statutory interpretation is to ascertain and give effect to the legislative intent. *Frankenmuth Mutual Ins Co v. Marlette Homes, Inc*, 456 Mich. 511, 515, 573 N.W.2d 611 (1998). In determining legislative intent, a court should review the language of the statute. *Id*. If the statute is clear, the legislature is presumed to have intended the meaning expressed, and judicial construction is neither required nor permitted. *Id*. A court must consider the object of the statute and the harm it is designed to remedy and apply a reasonable construction which best accomplishes the statute's

purpose. *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Dorsey*, 268 Mich.App. 313, 326, 708 N.W.2d 717 (2005).

Additionally, when interpreting a statute, this Court gives effect to every phrase, clause, and word. When a statute provides its own glossary, the terms must be applied as expressly defined. *In re Turpening Estate*, 258 Mich.App. 464, 465, 671 NW2d 567 (2003). "If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Donajkowski v. Alpena Power Company*, 460 Mich. 243, 248-249, 596 N.W.2d 574 (1999). Furthermore, "[w]here a statute does not define one of its terms it is customary to look to the dictionary for a definition." *Marcelle v. Taubman*, 224 Mich.App. 215, 219, 568 N.W.2d 393 (1997) (utilizing *Black's Law Dictionary*).

The applicable statute provides that the "amount in controversy" must not exceed $25,000.00. The phrase "amount in controversy" is not defined by the statute. It may be appropriate to look to a dictionary for the definition if the phrase is insufficiently explained by decisional authority.[4] "Amount in controversy" is "The damages claimed or relief demanded; the amount claimed or sued for." *Black's Law Dictionary*, Fifth Edition, p 76. In other words, the "amount in controversy" is the amount at risk in the litigation. *AKC, Inc. v. ServiceMaster Residential/Commercial Services Ltd.*, *supra*. See *Corle v. Estate Planning and Preservation, Inc.*, Opinion and Order (U.S.D.C., N.D. No. 1:11-cv-

[4] The undersigned begins with this proposition notwithstanding that Plaintiff finds this approach least persuasive.

226 Ind. 2011) (referring to the amount in controversy as an amount that is at risk).[5] Accordingly, although misconduct may give rise to injuries of a larger amount, the claimant may waive his or her claim to "damages" arising from the "injuries"[6] that exceed the jurisdictional limit. The effect of the waiver is to reduce the amount at risk – to reduce the amount in controversy.

The Court of Appeals rejected the proposition that the district court should determine jurisdiction by review of the complaint. *Moody, supra*, 428. The court turned first to standard dictionaries on "amount in controversy," first consulting the *Random House Webster's College Dictionary* (1996) and *The American Heritage Dictionary of the English Language* (new college ed., 1981). The court then referred to *Black's Law Dictionary* (9th ed.) to define "controversy" and "amount in controversy." The lower court acknowledged that "amount in controversy" may be a term of art:

> Also, because the phrase "amount in controversy" concerns a court's jurisdiction, it may have acquired a "peculiar and appropriate meaning in the law," MCL 8.3a, so it is also appropriate consult a legal dictionary. *People v. Steele*, 283 Mich.App. 472, 488 n. 2, 769 N.W.2d 256 (2009). [*Id.*, 429-430.]

---

[5] In fn. 1, the court explained, "The Court also notes that "[i]n the class action context, the amount in controversy is measured in terms of each plaintiff's separate claim, not the aggregate amount that may be at risk for the defendant.'"

[6] Plaintiff refers to "damages" as the amount(s) that are may be legally awarded in the context of the litigation at hand, *i.e.*, taking into account restraints that are imposed as a matter of law. "Injuries" is a short-hand used to mean potential damages that may be awarded in a court of unlimited jurisdiction.

However, the lower appellate court erred in two respects: (i) standard dictionaries are not best suited to define a legal term of art, and (ii) a legal phrase is gravely distorted by deconstruction of the phrase – individual analysis of each individual word. *Redmond v State Farm Mutual Automobile Ins. Co.*, unpublished per curiam opinion (Mi.Ct.App. Nos. 313413 & 315416, 12/2/2014) (Shapiro, J., concurring), addressed the same issue presented in *Moody*. J. Shapiro wrote, slip op 2, n 2, "Our Supreme Court has specifically rejected the approach of using lay dictionaries to separately define words that together make up a term of art. *Macomb Co v AFSCME Council 25*, 494 Mich. 65, 86 n 59; 833 NW2d 225 (2013)." J. Shapiro elaborated, *id.,* slip op, 1-2:

> "Amount in controversy" is not defined in the statute, but is plainly a legal term of art. Indeed, the *Moody* panel cited the legal definition of "amount in controversy" provided by Black's Law Dictionary: "[t]he damages *claimed* or *relief demanded* by the injured party to a lawsuit." *Id*. at 430, citing *Black's Law Dictionary* (9th ed.) (emphasis added). This is a perfectly adequate and understandable definition of "amount in controversy." It is a legal term of art that means "the damages claimed or relief demanded." Nevertheless, the *Moody* panel then divorced the word "controversy" from the rest of the term of art and turned to legal and lay dictionary definitions of this isolated word. Doing so violated the fundamental rule that "[c]ontextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: '[i]t is known from its associates,' see Black's Law Dictionary (6th ed.), p. 1060.[] This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." 2 *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002) (quotation marks and citations omitted). It was also inconsistent with the statutory interpretation canon of favoring the specific over the general, i.e., *generalia specialibus non derogant* ("the general does not detract from the specific"). See, e.g., *Craig v Detroit Pub Schs Chief Executive Officer*, 265 Mich App 572, 575; 697 NW2d 529 (2005). [Footnote omitted.]

Judge Shapiro's concurrence is persuasive. To whatever degree a dictionary is warranted, a legal dictionary best defines the term of art by reference to the entire phrase,

not by parsing the individual words. Thus, the definition within Black's Law Dictionary – "[t]he damages *claimed* or *relief demanded* by the injured party to a lawsuit" – is the only reasonable definition absent decisional authority on the subject. However, there is ample authority giving substance to "amount in controversy" making dictionaries superfluous. To that authority Plaintiff turns.

B. Decisional authority confirms the District Court's jurisdiction.

Decisional authority holds that the complaint determines the court's jurisdiction.

In *Clohset v. No Name Corp.*, 302 Mich.App. 550, 840 N.W.2d 375 (2012), the court reviewed the issue of jurisdiction in the district court. The plaintiff Clohset brought an action in district court for possession of realty, not seeking damages. Clohset acknowledged that damages would exceed $25,000 and would be sought in circuit court. The parties entered into a settlement agreement in 1998, for $384,822.95, executing "pocket" consent judgments for potential entry in district or circuit court. Thereafter, in 1999, Clohset filed the district court consent judgment, stating that there was a default and that the amount owed was $222,102.09. The district court entered the stipulated consent judgment on October 1, 1999. Nine years passed. On March 24, 2009, Clohset[7] demanded $222,102.09. Defendants stipulated to a renewal of the consent judgment, which the district court entered on September 15, 2009. There were further procedural gyrations not relevant to the outcome of this appeal.

[7] Phillip Clohset was then acting on behalf of the Estates of Clarence and Virginia Clohset.

Ultimately, the appellate court considered whether the district court had jurisdiction to enter the 2009 consent judgment. The court found that the district court did have jurisdiction, noting that: (i) a consent judgment possesses a character that is distinct from that of an ordinary judgment, (ii) the complaint was predicated upon MCL 600.8302(3) (jurisdiction regarding claims under MCL 600.5701 *et seq*.) and not upon MCL 600.8301(1) (the general grant of jurisdiction), and (iii) having created the error, the defendants were not permitted to harbor the alleged error as an appellate parachute. Although this appeal is factually distinct from *Clohset*, the court's opinion unequivocally delineates the general proposition that controls this action: jurisdiction is established by the pleadings.

First, the court set forth the general proposition that governs jurisdiction. It wrote:

> While it is true that a judgment entered by a court that lacks subject-matter jurisdiction is void, *Altman v. Nelson,* 197 Mich.App 467, 472–473; 495 NW2d 826 (1992), subject-matter jurisdiction is established by the *pleadings,* and exists "when the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *In re Hatcher,* 443 Mich. 426, 444; 505 NW2d 834 (1993); see also *Grubb Creek Action Comm v. Shiawassee Co Drain Comm'r,* 218 Mich.App 665, 668; 554 NW2d 612 (1996), citing *Luscombe v. Shedd's Food Prod Corp,* 212 Mich.App 537, 541; 539 NW2d 210 (1995) ("A court's subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint.").
>
> Because subject-matter jurisdiction is determined by reference to the pleadings, * * *. The district court accordingly had jurisdiction over this case.

The court further explained that it was inconsequential that the consent judgment granted relief that "was different in kind from that initially requested in the district court complaint, nor by the fact that the monetary amount of the stipulated damages exceeded

the general jurisdictional limit of the district court." (Here, Plaintiff Hodge did not request judgment for damages in excess of $25,000.) Finally, the court noted that a judgment of $25,000 in damages would be allowed under the general jurisdictional amount, regardless of the amount of the consent judgment.

> Even assuming arguendo that the general jurisdictional limit applied, it might at most be argued that the monetary amount of the consent judgment in excess of the $25,000 general jurisdictional limit (plus interest, costs, and attorney fees) was not recoverable, not that the entirety of the judgment was void. This was the result, for example, in *Brooks v. Mammo,* 254 Mich.App 486; 657 NW 2d 793 (2002), where this Court limited the plaintiff's recovery to the circuit [sic, district] court's $25,000 general jurisdiction limit.

Thus, *Clohset* squarely repudiates the lower appellate courts' rulings. Numerous decisions are in accord; no decision before *Moody* is in discord.

In *Trost v. Buckstop Lure Co., Inc.*, 249 Mich.App. 580, 587, 644 N.W.2d 54 (2002), the plaintiff Trost sought relief from a judgment entered in a previous action. Trost asserted that the prior judgment (for libel) was void for lack of subject matter jurisdiction. The court rejected Trost's argument; the court was clear that jurisdiction is determined by review of the (prior) complaint without regard to other matters. The court held:

> Jurisdiction is the power of a court to act and the authority of a court to hear and determine a case. A court's subject-matter **jurisdiction is determined only by reference to the allegations listed in the complaint**. If it is apparent from the allegations that the matter alleged is within the class of cases with regard to which the court has the power to act, then subject-matter jurisdiction exists. [*Id.*, 586; internal quotation marks and citations omitted; emphasis added.] * * *

> However, * * * subject-matter jurisdiction does not depend on whether the claim is true or false, but instead on the allegations pleaded (and not the facts) * * *. [*Id.*, 587.]

In *Fox v. Martin*, 287 Mich. 147, 283 N.W. 9 (1938), a lien was imposed upon certain property; the lien automatically and unequivocally expired after one year. Nevertheless, the complainant foreclosed on the property more than one year after the lien was imposed. Thus, from the face of the complaint, it was clear that there was no juridical basis for a foreclosure against the debtor. The court explained that jurisdiction to foreclose was determined by looking to the allegations of the complaint:

> **Jurisdiction does not depend upon the facts, but upon the allegations**. * * * The question of jurisdiction does not depend on the truth or falsehood of the charge, but upon its nature: it is determinable on the commencement, not at the conclusion, of the inquiry: * * *. Jurisdiction always depends upon the allegations and never upon the facts. [Internal quotation marks and citations omitted; emphasis added.]

In *Woods v. Massachusetts Protective Ass'n*, 34 F.2d 501 (D.C.Ky. 1929), the plaintiff brought an action claiming only $3,000, although the underlying insurance policy was for the sum of $5,000. The plaintiff did this to defeat federal court jurisdiction.[8] The federal court held that the action was not removable to federal court, because the plaintiff did not claim $5,000. In its extensive review of the subject, the court explained.

> "[A] party may voluntarily remit and abandon all claim and right to recover the amount which thus exceeds the jurisdiction, and may maintain his action for an amount within the jurisdiction of the court. [*Id.*, 502.]

* * *

8 The federal court would honor the shorter contractual period of limitation and defeat the claim, but state law would apply the longer statutory period of limitations.

> A plaintiff in an action for damages may demand less than he has sustained and thereby restrict his recovery to the lesser amount and defeat a removal. [H]e may prefer to sue for that sum or less and thereby keep his case in the state court, rather than sue for the full damages with the resulting delay and annoyance and expense of a removal to the United States Circuit Court. [*Id.*, 504.]

Accordingly, the district court in this case, like the federal court, properly determined that it should honor the complaint's request for "damages" in an amount that do not exceed $25,000, regardless of the amount of the "injuries."

In *Etefia v Credit Technologies, Inc.*, 245 Mich.App. 466, 628 N.W.2d 577 (2001), the court considered whether the circuit court had properly transferred the action to the district court, despite the plaintiff's allegation of a claim in excess of $25,000. The court reversed. It found that, upon its "review of the allegations contained in plaintiff complaint and the nature of the damages available," it could not determine with legal certainty that the value of the case was less than $25,000. Thus, the circuit court had erred in transferring to district court. Germane to this appeal, the court looked to the complaint and to permissible inferences therefrom.

In *Iowa Central Ry. Co. v. Bacon*, 236 U.S. 305, 35 S.Ct. 357 (1915), the U.S. Supreme Court squarely rejected Defendant's argument. There, the defendant contended that the damages were $10,000 for the killing of the plaintiff's intestate and asserted that the federal court had jurisdiction. (The federal court had jurisdiction if the amount in controversy was over $2,000.) However, the plaintiff had prayed for only $1,990. The

U.S. Supreme Court confirmed that the amount prayed for governed jurisdiction; the case was properly left in the state court.

> [T]he case now under consideration was not, upon the face of the record, a removable one. **The prayer for recovery was for $1,990, and consequently the amount required to give jurisdiction to the Federal court was not involved.** [*Id.*, 308, 310; emphasis added.]

Brady v. Indemnity Ins. Co. of North America, 68 F.2d 302 (6th Cir. 1933), reaches the same conclusion. The plaintiff brought suit as a beneficiary of a $15,000 accident insurance policy issued by the defendant, but the plaintiff prayed for only $2,999.99 – one cent less than the federal jurisdictional amount ($3,000). The defendant sought to remove the action to the federal court. The federal court held it did not have jurisdiction, because the prayer for relief governed jurisdiction.

> It was the appellant's right to determine the amount of indemnity she would claim, mot the appellee's. When she did so and sued therefor, **that amount became the sum or value in controversy**. That she claimed a lesser amount than she might have claimed for the purpose of preventing removal is not in our opinion important. **She had the right to sue for this lesser amount**. [*Id.*, 304; emphasis added.]

Krawczyk v. Detroit Auto. Inter-Insurance Exchange, 117 Mich.App. 155, 323 N.W.2d 633 (1982), aff'd in part, rev'd in part, 418 Mich. 231, 341 N.W.2d 110 (1983), involved a claim for no-fault benefits; the district court jurisdictional amount was $10,000. *Id.*, 158. After trial, the court reviewed the permissible no-fault benefits. The court found that the plaintiff was entitled under the no-fault act to damages of $7,746 but to an award of $12,435.95, inclusive of interest, costs, and attorney fees. The court turned to whether the district court had jurisdiction to award $12,435.95 or only $10,000.00. However, the court

never contemplated that the damages of $12,435.95 implied that the district court was divested of jurisdiction – the decision reached here by the lower appellate courts.[9, 10] See *Marquis v Hartford Accident and Indemnity Company*, unpublished per curiam opinion (Mi.Ct.App. No. 204169, 5/23/1999) (affirming the district court's ruling to reduce the $16,575 jury award to the $10,000 jurisdictional limit).

In *Brooks v Mammo*, 254 Mich.App. 486, 657 N.W.2d 793 (2002), the district court jury returned a verdict of $50,000. The Court of Appeals held, "[P]laintiff is entitled to a damages judgment in the amount of $25,000." *Id.*, 497. Thus, there was jurisdiction to enter a judgment for $25,000, although the verdict returned by the jury was for $50,000.

No doubt Defendant will object to reliance upon *Brooks*, asserting that the appellate court was confronted with a procedurally challenging issue due to changes in the law during the pendency of the action. However, there is no need for bewilderment.

(i) The district court jurisdiction was limited to $25,000, because:

(a) The statute[11] allowing a judgment in excess of the district court jurisdiction had been repealed, and

---

[9] The Court of Appeals determined that interest, costs and attorney fees were not counted for the purpose of the jurisdictional limit.

[10] This Court also reviewed the items that were awardable under the no-fault law. *Krawczyk v. Detroit Auto. Inter-Insurance Exchange*, 418 Mich. 231, 341 N.W.2d 110 (1983). This Court partially reversed, finding that profit-sharing benefits are recoverable under the no-fault act and affirmed in all other respects. Id., 236. Again, no consideration was directed toward divesting the district court of jurisdiction and awarding no damages.

[11] "MCL 600.641(1). MCL 600.641(5) [had] further provided that a verdict or judgment in an action removed to the district court was lawful to the extent of the amount demanded, irrespective of the jurisdictional limit otherwise applicable to actions filed in the district court." *Id.*, 489.

(b) The district court jurisdictional amount had increased to $25,000 and the new amount governed. *Id*. at 96.

(ii) Therefore, notwithstanding the jury verdict for $50,000, the judgment was constrained to $25,000.

A detailed reconstruction of the court's reasoning is unnecessary. By Defendant's reasoning the district court lost jurisdiction once the appellate court concluded that the district court's jurisdictional limit was $25,000. In actuality, neither the evidence at trial nor the verdict divested the district court of jurisdiction to enter its judgment.

In *Southfield Jeep, Inc v Preferred Auto Sales, Inc*, unpublished per curiam opinion (Mi.Ct.App. No. 256014, 6/9/2006), aff'd in part, rev'd in part, 477 Mich. 1061, 728 N.W.2d 459 (2007), the district court jury returned a verdict in factor of the defendant's counterclaim, finding damages of $90,000 (defamation) and $60,000 (interference with business relationship). The Court of Appeals held that the district court was restricted to entry of a judgment of $25,000.[12] Again, although the jury returned a verdict for $150,000, the district court was empowered to enter a judgment for $25,000.

Therefore, based on the authority cited above, the district court maintains jurisdiction over this case even if damage claims are presented to the jury exceeding the jurisdictional limit. The district court has the authority to enter a judgment up to the

[12] The court rejected the argument that the matter could (after verdict) be transferred to the circuit court for entry of a judgment in the full amount.

jurisdictional limit of $25,000.00. The circuit-appellate court and Court of Appeals erred in ruling otherwise.

Also worthy of note, jurisdiction is not defeated by speculation and conjecture regarding future events. In *New Hampshire Indem. Co. v. Scott*, unpublished 2012 WL 6537098 (U.S.D.C., M.D. No. 8:11-cv-943-T Fla., 2012), NHIC (the insurer) brought a declaratory action, seeking a judgment that it had no duty to defend or indemnify. The insurance policy was for $10,000/$20,000 per person/occurrence. The court determined that it had no jurisdiction. The court rejected NHIC's argument that jurisdiction should be premised upon a potential insurance-bad-faith action (valued at more than $75,000). The court dismissed and explained:

> When NHIC filed this declaratory judgment action, an insurance-bad-faith action was wholly speculative. * * * NHIC argues essentially that, because the present action serves as a prerequisite to a future, speculative action, the amount in controversy in the future, speculative action controls the amount in controversy in the present action. **But a declaratory judgment's attenuated, collateral consequence perforce res judicata, collateral estoppel, or stare decisis contributes nothing to the amount in controversy**. The recovery available in a speculative, unfiled insurance-bad-faith action is not "in controversy" in this action. [*Id.*; citations omitted; emphasis added.]

Accordingly, jurisdiction to try the case is always predicated upon the allegations in the complaint and not upon the proceedings or outcome. *Zimmerman vs. Millers*, 206 Mich. 599, 604-605, 173 N.W. 364 (1919) (jurisdiction of the court is determined by the amount demanded in the plaintiff's pleadings, not by the sum actually recoverable or that found by the judge or jury on the trial); *Grubb Creek Action Committee v. Shiawassee County Drain Com'r*, 218 Mich.App. 665, 668, 554 N.W.2d 612 (1996) ("If it is apparent from the

allegations that the matter alleged is within the class of cases with regard to which the court has the power to act, then subject-matter jurisdiction exists."); *Fifth Third Bank v. Wertz*, unpublished per curiam opinion (Mi.Ct.App. No. 250058, 1/25/2005) ("*Etefia* make clear that it is only appropriate for a circuit court to hold that it lacks jurisdiction over a case due to the amount in controversy if it appears to a legal certainty from the allegations of a complaint that the amount in controversy is less than $25,000.").

Finally, *Walker vs. Dinh Van Thap and Liberty Lloyds Ins. Co.*, 637 So. 2d 1150 (La.App. 4 Cir., 1994), is squarely on point. There, the trial court's jurisdictional limitation was $10,000, but the court found that the plaintiff had sustained over $21,000 in injuries, reduced by 50% comparative fault. The issue was whether: (1) the injuries should be reduced by 50% ($10,500) and then reduced to $10,000 (final judgment), or (2) the jurisdictional limitation should first be applied and then the amount reduced by 50% to $5,000 (final judgment). The court determined that the "amount in dispute" (similar to Michigan's "amount in controversy") "means the maximum amount that the successful party may be awarded by judgment." *Id.*, 1153. Thus, the judgment for plaintiff was for $10,000. The court perceived that the plaintiff had suffered injuries of $21,625.62 that must be reduced so that the judgment for damages was no greater than $10,000. Pertinent

to this appeal, it was never proposed – even by the defendant – that the entire judgment must be vacated, the result imposed by the lower appellate courts.[13]

Jurisdiction to try the case, therefore, is predicated upon the allegations in the complaint and not upon the proceedings or outcome. Consequently, the district court had jurisdiction over this case.

C. The logic of the *ad damnum* clause to the jurisdictional limit.

Defendant argues that Plaintiff's *ad damnum* clause[14] does not govern the amount

[13] In *Bullock v. Graham*, 681 So.2d 1248 (La. 1996), and in *Benoit v. Allstate Ins. Co.*, 773 So.2d 702 (La. 2000), the Louisiana Supreme Court further considered this and a related issue. However, in no event was the plaintiff precluded from recovering any amount.

[14] "*The clause in a complaint that sets a maximum amount of money that the plaintiff can recover under a default judgment if the defendant fails to appear in court.*

"It is a fundamental principle of due process that a defendant must be given fair notice of what is demanded of him or her. In a civil action, a plaintiff must include in the complaint served on a defendant a clause that states the amount of the loss or the amount of money damages claimed in the case. This clause is the *ad damnum.* It tells a defendant how much he or she stands to lose in the case.

"In some states, the *ad damnum* sets an absolute limit on the amount of damages recoverable in the case, regardless of how much loss the plaintiff is able to prove at trial. The reason for this rule is that a defendant should not be exposed to greater liability than the *ad damnum* just because he or she comes into court and defends himself or herself. In states that follow this rule, a plaintiff may be given leave to increase the amount demanded by amending the complaint if later circumstances can be shown to warrant this. For example, a plaintiff who sues for $5,000 for a broken leg may find out after the action has begun that she will be permanently disabled. At that point, the court may allow the plaintiff to amend her complaint and demand damages of $50,000.

"In most states and in the federal courts, a plaintiff can collect money damages in excess of the *ad damnum* if proof can be made at trial to support the higher amount. A defendant may ask for more time to prepare the case in order not to be prejudiced at trial if it begins to look as though the plaintiff is claiming more money than the *ad damnum* demands. However, the defendant cannot

in controversy. To the contrary, this is the rare case where "saying it does make it so."[15] In the above federal decisions, there was no factual inquiry. As in this case, the request for relief was not a factual assertion – not to be proved true or false.[16] Rather, it was a binding acknowledgement that the plaintiff cannot achieve damages more than claimed.

Plaintiff immediately warns against conflating two distinct circumstances that are analytically dissimilar: (i) a request for damages less than a specific amount and (ii) a claim for damages more than a designated amount. A claim greater than a jurisdictional minimum amount is only a claim, not a binding, self-imposed, enforceable limitation upon the plaintiff. *I.e.*, if the plaintiff seeks $250,000 for a fire loss under insurance policy # A123Z, the fact that the insurance policy coverage is only $10,000 will (absent special circumstances) immediately disprove the assertion that the amount in controversy exceeds $25,000.[17] On the other hand, if the plaintiff brings an insurance claim for only $2,999.99 (with federal jurisdictional more than $3,000), the federal court has no jurisdiction. No factual inquiry as to the insurance policy is warranted; jurisdiction

---

prevent judgment for a higher amount." The Free Dictionary (by Farlex), Ad damnum

[15] In contract law, if Buyer states, "I offer to pay $50 for the red wagon," there **is** an offer. Saying it makes it so.

[16] In other contexts, see, 2 McCormick, Evidence (5th ed), § 249, p 100, discussing verbal conduct that creates a contract – not an "assertion" that is subject to the hearsay rule; *McCullough v. State*, 973 N.E.2d 62 (Ind.App.,2012) (Verbal conduct to which the law attaches legal significance, such as the contract on which suit is based, is not offered to prove the truth of the statements.)

[17] Adverse consequences may follow the plaintiff's lie to the court. See MCR 2.114(D), MCR 2.114(E).

remains with the state court as a matter of law. The claimant's binding acknowledgment means that there is no amount in controversy over $3,000 (notwithstanding an insurance policy for $15,000), because the plaintiff cannot secure a judgment exceeding the claimed amount. *Brady, supra.*[18]

> [H]aving sued for only $2,999.00, the appellant could not after judgment make any further claim under the policy. * * * It was the appellant's right to determine the amount of indemnity she would claim, not the appellee's. When she did so and sued therefor, that amount became the sum or value in controversy. That she claimed a lesser amount than she might have claimed for the purpose of preventing removal is not in our opinion important. She had the right to sue for this lesser amount. [*Id.*, 303-304.]

Accord *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 58 S.Ct. 586 (1938) ("If [the plaintiff] does not desire to try his case in the federal court he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove." Citing *Woods v. Massachusetts Protective Ass'n, D.C.*, *supra*, 34 F.2d 501.)[19]

In *AKC, Inc. v. ServiceMaster Residential/Commercial Services Ltd.,* 2013, *supra*, after the defendant removed to federal court, the plaintiff filed a stipulation and declaration that its damages were less than $75,000. The federal court remanded, noting that the plaintiff's "stipulation binds it to a recovery of no more than this figure in state court."

---

[18] *Brady v. Indemnity Ins. Co. of North America*, 68 F.2d 302 (6th Cir. 1933).

[19] The *St. Paul Mercury Indem.* decision further stated at 294, n 25, "And an amendment in the state court reducing the claim below the jurisdictional amount before removal is perfected is effective to invalidate removal and requires a remand of the cause: *Maine v. Gilman*, C.C., 11 F. 214; *Waite v. Phoenix Ins. Co.,* [62 F. 769, C.C. Tenn. 1894]; *Harley v. Firemen's Fund Ins. Co.*, D.C., 245 F. 471."

Accord *Doxey v. Scottsdale Ins. Co.* (U.S. District Court, W.D. No. 13-cv-222 La. 2013) (Remand is proper if the plaintiff demonstrates that it is legally certain that its recovery will not exceed the jurisdictional amount. Plaintiffs can meet this burden by filing a pre-removal binding stipulation or affidavit affirmatively renouncing their right to accept a judgment in excess of $75,000.00.)

The significance of the request for relief is also seen in numerous foreign decisions involving the award of damages where:

(i) the plaintiff seeks a sum certain,

(ii) the defendant defaults, and

(iii) the damages awarded to the plaintiff cannot exceed the sum certain stated in the complaint, binding the plaintiff.

The prayer for relief, as a matter of law, precludes a default judgment in excess of the sum requested. *Hicks v. Pleasants* (A default judgment shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.); *Alexander v. McDow* (The entry of judgment for an amount in excess of that called for by the summons was indisputably error.); *Ruth v. Smith* (The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint.); *Koby v. Koby* (A trial court may not award relief beyond that sought in the complaint when the defendant does not file defensive pleadings and does not appear at trial.); *In re Genesys Data Technologies, Inc.* (Judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.); *Jensen v. Jensen* (In a default proceeding no relief may be granted in excess of that prayed for in the complaint.); *Oviatt*

v. Oviatt (If greater relief be granted than the relief prayed, the defendant may have the judgment or decree set aside.); *Scannell v. Ed. Ferreirinha & Irmao, LDA* (A defaulted defendant retains a palpable reliance interest in the rule that assures that his liability on default will in no event exceed the amount of the plaintiff's demand.); *Elmen v. Chicago, B. & Q.R. Co.* (No judgment can be rendered in excess of the amount indorsed upon the summons in case of default in an action where the only relief sought is a money judgment.); *Smith v. Travellers' Protective Ass'n of America* (The restriction of the relief which may be granted a plaintiff, when no answer is filed by the defendant, applies only when the plaintiff moves for judgment by default final.); *City of Philadelphia, to Use of Watson v. Pierson* (The right of a plaintiff to judgment on a rule for it for want of a sufficient affidavit of defense must be determined from it and the plaintiff's statement. The court can consider nothing else in disposing of the rule.); (*Troutbrook Farm, Inc. v. DeWitt* (A default judgment that exceeds the amount of demand for judgment to be null and void in its entirety.); *Harris v. Harris* (The plaintiff in a default case is limited in his recovery to that demanded in the prayer for relief.); *Capitol Brick, Inc. v. Fleming Mfg. Co., Inc.* (It is impermissible in a default judgment to render judgment for damages in excess of the damages specifically pleaded.); *Holt v. Holt* (A defaulting party should expect that the relief granted will not exceed that sought in the complaint.); *Matter of Marriage of Leslie* (To the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void.); *National Operating, L.P. v. Mutual Life Ins. Co. of New York* (In

default judgments, relief is limited to that which is demanded in the plaintiff's complaint.)[20]

Accordingly, any factual analysis or argument regarding the truth or falsity of the prayer for relief should fall on deaf ears. Such discussion is analytically vacuous for its failure to appreciate that the relief requested – not to exceed $25,000 – constrains the plaintiff's damages to the range: $0 – $25,000. By operation of law, only $25,000 is in controversy; no factual inquiry is warranted. Moreover, as noted, there is no analytical parallel between a request for relief under a specified amount – a binding acknowledgment – and the opposite request for an amount beyond the jurisdictional minimum amount.

[20] *Hicks v. Pleasants*, 158 P.3d 817, 821 (Alaska, 2007); *Alexander v. McDow*, 108 Cal. 25, 31, 41 P. 24 (1895); *Ruth v. Smith*, 29 Colo. 154, 158, 68 P. 278 (1901); *Koby v. Koby*, 277 Ga. 160, 160, 587 S.E.2d 48 (2003); *In re Genesys Data Technologies, Inc.*, 95 Hawai'i 33, 38, 8 P.3d 895 (2001); *Jensen v. Jensen*, 97 Idaho 922, 923, 357 P.2d 200 (1976); *Oviatt v. Oviatt,* 174 Iowa 512, 156 N.W. 687, 690 (1916); *Scannell v. Ed. Ferreirinha & Irmao, LDA*, 401 Mass. 155, 163, 514 N.E.2d 1325 (1987); *Elmen v. Chicago, B. & Q.R. Co.*, 75 Neb. 37, 105 N.W. 987, 988 (1905); *Smith v. Travellers' Protective Ass'n of America*, 200 N.C. 740, 158 S.E. 402, 405 (1931); *City of Philadelphia, to Use of Watson v. Pierson*, 211 Pa. 388, 393-394, 60 A. 999 (1905); *Troutbrook Farm, Inc. v. DeWitt*, 540 A.2d 18, 20 (1988); *Harris v. Harris*, 279 S.C. 148, 151-152, 303 S.E.2d 97 (1983); *Capitol Brick, Inc. v. Fleming Mfg. Co., Inc.*, 722 S.W.2d 399, 401 (1986); *Holt v. Holt*, 672 P.2d 738, 741 (Utah, 1983); *Matter of Marriage of Leslie*, 112 Wash.2d 612, 618, 772 P.2d 1013 (1989); *National Operating, L.P. v. Mutual Life Ins. Co. of New York*, 244 Wis.2d 839, 869, 630 N.W.2d 116 (2001).

D. MCR 4.002 disproves Defendant's reasoning.

The Court of Appeals opinion makes no reference to MCR 4.002, but Defendant's Brief[21] on appeal before the Court of Appeals attached Ex. 3, a motion that, *inter alia*, proposed, "10. In the alternative, this case should be transferred to the Wayne County Circuit Court, as this Court lacks subject matter over this case." Defendant's Brief to the Court of Appeals made only a glancing reference to MCR 4.002, noting the rule in its discussion of *Southfield Jeep, supra*. Rather, Defendant argued that the trial court should have transferred the action to circuit court pursuant to MCR 2.227(A)(1). Defendant focused on the general rule – MCR 2.227(A)(1) – rather than upon the rule that specifically governs transfers from district court to circuit court. Here, Plaintiff's analysis of MCR 4.002 demonstrates that the district court may permissibly try cases where "injuries" exceed $25,000.

Two rules explicitly permit a transfer from district court to circuit court: MCR 4.201 and MCR 4.002. The first rule requires virtually no discussion, since it clearly does not apply to the circumstances of the case. It is equally certain that the second rule does not permit Defendant to move to transfer the action, although some analysis is warranted.

MCR 4.201 does not apply to this cause of action.

MCR 4.201 addresses only an action for possession or recovery of realty -- referring to (i) the written instrument for occupancy, (ii) notice to quit or demand for possession,

[21] Defendant-Appellee, State Farm Mutual Automobile Insurance Company's Brief on Appeal in Docket No. 30723, 5/15/2013.

(iii) description of the premises or the holding, (iv) "rent," "rental period," "tenancy," "trespass" and other incidents regarding recovery of property, and (v) discussion of landlord-tenant summary proceedings. Clearly, this rule has no bearing here.

MCR 4.002 permits but does not compel the plaintiff to transfer to circuit court.

A motion to transfer is governed by MCR 4.002.

> **Rule 4.002 Transfer of Actions from District Court to Circuit Court**
>
> (A) Counterclaim or Cross-Claim in Excess of Jurisdiction.
>
> (1) If a defendant asserts a counterclaim or cross-claim seeking relief * * *.
>
> (2) MCR 4.201(G)(2) and 4.202(I)(4) govern transfer of summary proceedings to recover possession of premises.
>
> (B) Change in Conditions
>
> (1) A party may, at any time, file a motion with the district court in which an action is pending, requesting that the action be transferred to circuit court. The motion must be supported by an affidavit stating that
>
> (a) due to a change in condition or circumstance, or
>
> (b) due to facts not known by the party at the time the action was commenced,
>
> the party wishes to seek relief of an amount or nature that is beyond the jurisdiction or power of the court to grant.
>
> (2) If the district court finds that the party filing the motion may be entitled to the relief the party now seeks to claim and that the delay in making the claim is excusable, the court shall order the action transferred to the circuit court to which an appeal of the action would ordinarily lie.

Certain irrelevant aspects of MCR 4.002 are immediately noted. First, subsection (A)(1) clearly has no bearing, inasmuch as no counterclaim or cross-claim was filed. Second, subsection (A)(2) merely provides that two court rules – MCR 4.201(G)(2) and MCR 4.202(I)(4) – govern transfer of summary proceedings to recover possession of premises.

The critical rule is subrule (B), governing a case where the movant wishes to transfer to the circuit court in order that he or she may achieve a judgment in excess of $25,000. The party must be a plaintiff, a counter plaintiff, or a cross plaintiff, any of whom may seek a judgment in excess of $25,000.00.

Subrules MCR 4.002)(B)(1)(a) and MCR 4.002(B)(1)(b) require that the moving party provide an affidavit demonstrating either of two situations: (a) "a change in condition or circumstances" that caused the moving party to wish to "seek relief of an amount or nature that is beyond the jurisdiction or power of the court to grant" or (b) "facts not known by the party at the time the action was commenced" that caused the moving party to wish to "seek relief of an amount or nature that is beyond the jurisdiction or power of the court to grant." In either case, the movant must present an affidavit in support to transfer to circuit court.

The district court must then determine if it should grant the motion. Subrule MCR 4.002(B)(2) defines the circumstances under which the district court is empowered to grant the motion. The movant must show that he or she may be entitled to the relief available in the circuit court and not available in the district court.

> If the district court finds that the party filing the motion may be entitled to the relief the party now seeks to claim and that the delay in making the claim is excusable, the court shall order the action transferred to the circuit court to which an appeal of the action would ordinarily lie.

There is no doubt. MCR 4.002 permits a motion by the plaintiff predicated upon affidavit that he or she seeks relief that is unavailable in the district court. Upon motion

accompanied by affidavit, the motion may be granted "if the district court finds that the party filing the motion may be entitled" to the relief now sought by the plaintiff-movant.

Hopp Management Co. v. Rooks, 189 Mich.App. 310, 314, 472 N.W.2d 75 (1991), explains the operation of the rule.

> MCR 4.002 (B) was generally intended to provide a method of transfer in those situations in which a change in condition or circumstance, including facts unknown at the time of filing, so alter a party's cause of action that relief only obtainable in the circuit court must now be sought. The typical situation is that in which a personal injury action is filed in district court and a party's medical condition worsens, or it is later discovered that the actual medical condition of the party is other than that originally believed at the time of filing. [Internal quotation marks and citation omitted.]

Thus, *Hopp Management* confirms the rationale for the motion.

MCR 4.002 undermines Defendant's jurisdictional argument, since the rule contradicts Defendant's argument. To see this, each is reviewed.

Defendant's Argument

1. The district court's jurisdiction is limited to $25,000.

2. When the district court learns that potential injuries exceed the jurisdictional amount ($25,000), the district court must transfer or dismiss the action for lack of jurisdiction.

MCR 4.002

1. The plaintiff may move to transfer to circuit court, asserting that he seeks relief beyond the jurisdictional amount and that the delay is excusable.

2. The motion must be supported by an affidavit demonstrating that the claimed injuries exceed the jurisdictional amount ($25,000).

3. The district court **may** grant or deny the motion to transfer.

Unmistakably, Defendant's argument is undermined by the court rule. By its logic, the district court must transfer or dismiss the action for lack of jurisdiction. But to the contrary, the court rule permits the district court to retain jurisdiction over the action, notwithstanding the affidavit demonstrating injuries in excess of the jurisdictional limit. Defendant's argument fails. See *Southfield Jeep, Inc. v. Preferred Auto Sales, Inc.*, unpublished per curiam opinion (Mi.Ct.App. No. 256014, 6/29/06) (After the district court verdict for the counter defendant of $150,000, the district court's judgment is limited to $25,000, and the counter defendant cannot transfer the matter to the circuit court for entry of a judgment of $150,000.)[22]

In sum, first, the governing statute permits an action in district court where the plaintiff prays for relief not to exceed $25,000, thereby conclusively binding the plaintiff to that sum or less and establishing the amount in controversy. Second, Michigan decisional authority overwhelmingly confirms that: (i) jurisdiction is determined by the pleadings, and (ii) judgments for $25,000 are entered although the finder of fact may determine that there are injuries in excess of that amount. Third, Michigan court rules contemplate a trial in the district court although the injuries may exceed the jurisdictional amount. Thus, the circuit-appellate court erred by reversing the trial court, and the Court of Appeals erred by affirming the circuit-appellate court.

[22] Judgment Reversed in Part, Appeal Denied, 477 Mich. 1061, 728 N.W.2d 459 (2007).

ISSUE II

A DISTRICT COURT IS NOT DIVESTED OF SUBJECT-MATTER JURISDICTION ON THE BASIS THAT THE AMOUNT ALLEGED IN THE COMPLAINT WAS MADE FRAUDULENTLY OR IN BAD FAITH WHEN:

(i) THE PLAINTIFF ALLEGES LESS THAN $25,000 IN DAMAGES IN THE COMPLAINT,

(ii) THE PLAINTIFF IS WHOLLY COGNIZANT THAT AS A MATTER OF LAW HE/SHE WILL NOT RECEIVE A JUDGMENT THAT EXCEEDS $25,000;

(iii) UNDERLYING FACTS (POTENTIAL DAMAGES OR "INJURIES") MIGHT LEAD TO A JUDGMENT THAT EXCEEDS $25,000 IF THE ACTION WERE BROUGHT IN A CIRCUIT COURT; BUT

(iv) THE PLAINTIFF FINDS IT BEST TO LITIGATE IN THE DISTRICT COURT?

Standard of Review.

The abuse of discretion standard of review is applied to this issue. In *People v. White*, __ Mich.App. __, __ N.W.2d __ (No. 315579, 2014), the trial court denied the defendant's request for an evidentiary hearing regarding the voluntariness of his plea. The trial court explained, "After all, the Defendant swore under oath to this Court to a certain state of affairs, and to now allow him to attack his own sworn testimony would allow him to benefit from perjury (either at the plea or in his affidavit) as well as to countenance a fraud upon the Court." *Id.*, __. The court concluded that "the trial court did not abuse its discretion when it denied defendant's request for an evidentiary hearing." *Id.* Accord *People v. Serr*, 73 Mich.App. 19, 24, 28, 250 N.W2d 535 (1976) ("The trial judge did not abuse his discretion when he refused to set aside the guilty plea." The

court explained that allowing the defendant to deny his own statement would be a fraud upon the court.)

The district court was not divested of jurisdiction, because there was no sham or fraud upon the court.

This Court ordered the parties to consider the following issue.

> Whether a district court is divested of subject-matter jurisdiction when a plaintiff alleges less than $25,000 in damages in his or her complaint, but seeks more than $25,000 in damages at trial, on the basis that the amount alleged in the complaint was made fraudulently or in bad faith. (See, e.g., *Fix v Sissung*, 83 Mich 561, 563 [1890].)

With all due respect, Plaintiff is hard pressed to respond to the issue as promulgated by this Court. The above statement of the issue appears to answer itself. It suggests that Plaintiff did seek more than $25,000 in damages at trial notwithstanding the prayer for relief committing Plaintiff to a judgment that did not seek an amount in excess of $25,000. On that factual assumption, it appears patent that some consequence should follow. But the factual assumption is unwarranted.

In Issue I, Plaintiff-Appellant explains at length that the prayer for relief is a self-imposed, binding commitment that Plaintiff is subject to an absolute limit on her damages – not to exceed $25,000.00. In Defendant's Brief[23] on appeal before the Court of Appeals, p. 13, Defendant wrote:

> When Mrs. Hodge commenced this action, she affirmative asserted that the amount in controversy was less than $25,000. (Complaint, ***Exhibit***

[23] Defendant-Appellee, State Farm Mutual Automobile Insurance Company's Brief on Appeal in Docket No. 30723, 5/15/2013.

> 2). Specifically, she averred "The amount is controversy is within jurisdiction of this court ***because Plaintiff claims damages not in excess of $25,000*** …"." [Emphasis by Defendant.]

Defendant continued, "[T]hat allegation is false." *Id.*

But the prayer for relief has no truth/false value. Like an offer to buy a red car for $400, the statement of the offer *per se* establishes the offer. (It does not matter whether the putative purchaser has $400 or whether he really wants a blue car or so forth.) It is logically impossible for the prayer for relief (a self-imposed binding commitment that no judgment for the plaintiff can exceed $25,000) to be "false." As noted above, saying it makes it so. This argument is set forth *supra.* Since Plaintiff was fully aware that she could never achieve a judgment in excess of $25,000, there can be no logical inference or determination of any sort that she sought more than $25,000 in damages.

Plaintiff conjectures that this Court seeks discussion on one or more of the following subjects:

> 1. Is it inappropriate for Plaintiff's attorney to bring suit in the district court where the injuries[24] may sum to an amount that exceeds the district court's jurisdictional amount?
>
> 2. Where suit is brought in the district court, does the request to the district court to permit evidence of injuries exceeding the jurisdictional amount constitute fraud upon the court?
>
> 3. Does *Fix v Sissung*, 83 Mich 561, 47 N.W. 340 (1890), speak to this case?

[24] By "injuries," Plaintiff means potential damages that would be compensable in a court of unlimited jurisdiction.

1. Plaintiff's decision to bring this action in the district court is logical and in the client's best interest and is no fraud upon the court.

Plaintiff cannot predict the content of Defendant's appellate brief. However, the issues before this Court have been argued in numerous venues. It has been argued that Plaintiff's attorney is wrong or even unethical for bringing an action in district court, where the jurisdictional amount is less than the maximum award that a jury might find in circuit court. Before the Court of Appeals, in the companion case, *Moody, supra*, Plaintiff noted that the *Moody* defendant-appellee (in response to Plaintiff's application to the Supreme Court)[25] had mounted an attack upon Plaintiff's trial attorney. Plaintiff does not necessarily anticipate that Defendant will engage in an *ad hominem* attack upon Plaintiff's attorney. But such an attack has been leveled, and this Court has invited briefs by nonparties to this appeal. Thus, Plaintiff is compelled to anticipate that a brief in support of Defendant may renew the attack. And the proponent of any such attack may characterize it as a response to this Court's inquiry whether "the amount alleged in the complaint was made fraudulently or in bad faith." Thus, Plaintiff repeats the response set forth in *Moody*.

In this case, the logical fallacy in the argument is patent. The proponent asserts:

(1) Plaintiff's trial attorney is a bad man, because he brought suit in the district court rather than the circuit court.

[25] Plaintiff refers to the *Moody* defendant's response to the application to this Court requesting that this Court grant leave or order the Court of Appeals to review the *Moody* opinion.

(2) Therefore, Plaintiff's legal analysis must be wrong.

This is a transparent *non sequitur*. Nevertheless, Plaintiff briefly responds.

The proponent's argument is that Plaintiff's attorney acted against the Plaintiff's best interest by filing suit in the district court. To assess this assertion, Plaintiff proposes a criterion: the best strategy is that which maximizes the "expected return," the sum of possible outcomes, each weighed by the likelihood of the outcome.[26] Therefore, consider strategies, A and B, each with the following probabilistic outcomes.

A:	Outcome 1, \$38,000, probability = .05	probable value of outcome = \$1,900
	Outcome 2, \$20,000, probability = .10	probable value of outcome = \$2,000
	Outcome 3, \$15,000, probability = .15	probable value of outcome = \$2,250
	Outcome 4, \$0, probability = .70	probable value of outcome = \$0
		Expected value of strategy A = **\$6,150**
B:	Outcome 1, \$25,000, probability = .80	probable value of outcome = \$20,000
	Outcome 2, \$20,000, probability = .10	probable value of outcome = \$ 2,000
	Outcome 3, \$8,000, probability = .05	probable value of outcome = \$ 400
	Outcome 4, \$0, probability = .05	probable value of outcome = \$ 0
		Expected value of strategy B = **\$24,400**

Some might argue that the best strategy is that which allows the \$38,000 outcome,[27] regardless of the low probability of that outcome and regardless of the lower expected

[26] Decision theorists may posit that "expected return" is a reasonable criterion but not the only criterion. There is no doubt, however, that it is a widely accepted basis for choice under uncertainty. See, "Decision Theory," Wikipedia, (en.wikipedidia.org/wiki/Decision_theory, last modified on October 22, 2011 at 19:13, Ex. G.)

[27] This is referred to as the "maximax" strategy. "A strategy or algorithm that seeks to maximize the maximum possible result (that is, that prefers the alternative with the chance of the best possible outcome, even if its expected outcome and its worst possible outcome are worse than other alternatives) * * *." en.wiktionary.org/wiki/maximax, 3/1/2015 at 6:25 p.m.

value of strategy A. The proponent asserts that Plaintiff should employ strategy A, and indeed, that Plaintiff's counsel is stupid or unethical for employing strategy B. Main stream thought, to the contrary, would lead to strategy B, the strategy that maximizes the expected value.

Manifestly, the proponent fails to perceive the distinction between the ability to prove damages and the ability to contemplate damages. Plaintiff's trial counsel is certainly aware of the possible larger award in the circuit court. But a strategy that maximizes expected return is certainly a reasonable choice.

Second, the proponent fails to explain that it has any right to complain of Plaintiff's decision. Under most circumstances, surely, what is bad for the plaintiff is good for the defendant. Thus, to whatever degree Plaintiff is misguided in choosing the district court, Defendant is even more perverse in pointing out the error and insisting that Plaintiff correct the error. Seemingly, the proponent's argument is paradoxical – arguing against its own interest. Of course, in reality, there is no such paradox. Rather, Plaintiff's strategic course is best for plaintiff, and the proponent's challenge is best for the proponent. This is simply an ordinary, run-of-the-mill dispute between adversaries, each attempting to maximize its expected return, notwithstanding the rhetoric.

In sum, Plaintiff's counsel seeks the venue that is best for the client. This choice is precisely that which is demanded of an attorney; it has nothing to do with a fraud on the court.

2. Introduction of evidence of injuries that sum to more than the District Court jurisdictional limit is not a fraud upon the court.

Plaintiff, fully cognizant that she could never achieve a judgment that exceeds the jurisdictional limit, presented evidence of injuries that summed to more than $25,000. Defendant filed a motion in limine requesting that the trial court limit the evidence. Plaintiff's argument against the motion is easily conveyed.

Hypothetically, if Plaintiff had five medical bills of (i) $10,500, (ii) $4,300, (iii) $10,000, (iv) $15,000, and (v) $24,990, Plaintiff hoped that the jury would find that Plaintiff was entitled to (a) bills (i), (ii), and (iii), or (b) bills (iii) and (iv), or (c) bill (v). Thus, the jury would award approximately $25,000, and a judgment in that amount would enter. A more favorable jury determination is superfluous. Plaintiff argued that it should not be restricted to choosing which bills to present to the jury. Defendant argued the contrary.

Defendant engaged in a colloquy with the trial court judge.[28] Defendant had moved in limine "to preclude evidence or claims exceeding the jurisdiction." (Trial Vol. II, Ex. G, 43a) It argued, "We believe presenting claims above that limit would be cumulative, wasteful or prejudicial to the jury or to the Defendant, I should say, not to the jury." *Id.* Anticipating Plaintiff's response, Defendant stated, "Mr. Fortner has responded that as jurors they are entitled to take some, all or none of the evidence." *Id.*

[28] Trial Vol. II, 8/27/2010, Ex. G, 44a-45a, attached to Defendant-Appellee, State Farm Mutual Automobile Insurance Company's Brief on Appeal in Docket No. 30723, 5/15/2013, Ex. 5.

The judge responded, "You don't disagree with that, do you?" *Id.* "And, if they return a verdict in excess of twenty-five thousand dollars, it will be reduced to that." *Id.*, 43a-44a.

Defendant countered, "I understand. It is cumulative and wasteful to us to sit here and defend a claim –" But the judge interrupted:

> What you would be forcing Mr. Fortner to do is to pick and choose what claim he wants to present before the jury and that would be prejudicial to the Plaintiff in that the jury may buy some of what Mr. Fortner says and not other things that he says or those claims that he decided not to present or was prohibited from presenting before the jury may not be considered at all, so – [*Id.*, 44a.]

The colloquy continued:

> THE COURT: That's their decision. How is it prejudicial to the Defendant?
>
> MS. HABERSTROH: I don't know if it's so much prejudicial as wasteful and cumulative. Why should we sit here and through all these claims that exceed twenty-five thousand dollars?
>
> THE COURT: Because we don't know what the jury is going to accept and what they're going to reject. [*Id.*]

The colloquy before the trial court lays out the competing arguments for presenting evidence of no-fault benefits to the trial court that sum to more than $25,000. Manifestly, there was no fraud upon the court. The district court was fully aware that Plaintiff proposed presentation of evidence of no-fault benefits that summed to more than

$25,000. This would allow the jury to return a verdict regarding the "injuries"[29] to the Plaintiff, with the judgment confined to $25,000.

The argument of a fraud upon the district court might appear plausible if Defendant successfully demonstrated that the trial court abused its discretion by allowing the full panoply of injuries to be presented. But neither the circuit-appellate court nor the Court of Appeals determined that the trial court had abused its discretion. In view of the broad discretion allowed a trial court, it is no surprise that the lower appellate courts did not find that the trial court abused its discretion.[30]

The proposition that there was a fraud upon the court rests upon the avowal that the trial court abused its discretion by permitting evidence of extensive injuries to be presented to the jury.[31] But the trial court has wide latitude in determining what evidence may be presented. In *Kalamazoo Oil Co. v. Boerman*, 242 Mich.App. 75, 87-88, 618 N.W.2d 66 (2000), the court held, "Rather, we believe that where a default has been entered against a defendant as a sanction for discovery abuses, it should be within the trial court's discretion either to allow or to prohibit the defendant from introducing evidence of a

[29] That is, those no-fault benefits that might be awarded in full in a court of unlimited jurisdiction although restricted to $25,000 in the District Court.

[30] In the factual statement, Plaintiff noted Defendant's contention to the circuit court that the District Court erred by permitting submission of proofs to the jury that exceeded $25,000.00. The circuit court did not address that argument outside of the context of the district court's jurisdiction. The issue (outside of the context of jurisdiction) was not pursued.

[31] If submitting the evidence was within the trial court's discretion, it is illogical to argue that Plaintiff's conduct was a fraud upon the court.

party's comparative negligence at the trial on damages." In *Dykema Gossett PLLC v. Ajluni*, 273 Mich.App. 1, 730 N.W.2d 29 (2006), *aff'd in part, vacated in part*, 480 Mich. 913, 739 N.W.2d 629 (2007), the court noted that an abuse of discretion standard of review is used to assess trial court error in admitting or excluding evidence. *Id.*, 14. The court then explicated the abuse of discretion standard of review.

> [A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome. When the trial court selects one of these principled outcomes, the trial court has not abused its discretion * * *. [*Id.*, 15; internal citations and quotation marks omitted.]

In this cause of action, Defendant argues (implicitly or explicitly) that the district court abused its discretion regarding admission of evidence, and this demonstrates that Plaintiff committed a fraud upon the court. The record is patent; the trial court was fully aware that Plaintiff had limited herself to a judgment not to exceed $25,000 but that she contended that the jury should hear all of the evidence that might lead to the constrained judgment. No doubt the trial court was aware that the jury routinely and properly awards a verdict that exceeds the permissible judgment.

In medical malpractice actions, the jury may return a verdict far exceeding the permissible judgment. MCL 500.1483 provides: "In an action for damages alleging medical malpractice by or against a person or party, the total amount of damages for noneconomic loss recoverable by all plaintiffs, resulting from the negligence of all defendants, shall not exceed $280,000.00 unless, * * *."). Nevertheless, in *Shinholster v. Annapolis Hosp.*, 471 Mich. 540, 685 N.W.2d 275 (2004), the jury returned a verdict of

$564,600 (past noneconomic damages) and $62,500 each year for 1999 through 2003. In *Jenkins v. Patel*, 471 Mich. 158, 161, 684 N.W.2d 346 (2004), "The jury awarded plaintiff $10 million in noneconomic damages." This Court found no flaw in the jury verdict, but it also held that the judgment must be reduced pursuant to the medical malpractice noneconomic damages cap, MCL 600.1483(1). This Court held, "Although § 1483 reduces the damages awarded by the trier of fact, it does nothing to impinge upon the trier of fact's ability to determine an amount that is 'fair and equitable.'" *Id.*¸ 172. Thus, the trier of fact may return an award of damages, subject to the trial court's entry of a judgment permitted by the medical malpractice cap.

In a products liability action, the jury will also determine the "injuries," although the permissible damages in the judgment may be far less. MCL 600.2946a(1) imposes a cap on damages for noneconomic loss of $280,000. The jury is not informed of the cap. MCL 600.2946a(2). Rather, the trial court "shall adjust" an award to conform to the statutory limitation. See *Wessels v. Garden Way, Inc.*, 263 Mich.App. 642, 689 N.W.2d 526 (2004) (applying the cap to a verdict that far exceeds the limitation).

And MCL 257.710e, the statute governing seatbelt use, demonstrates the converse – the judgment may exceed the jury verdict. See *Thompson v. Fitzpatrick*, 199 Mich.App. 5, 501 N.W.2d 172 (1991) (The parties agreed that, factually, the failure to use seatbelts caused 50% of the injuries. However, pursuant to MCL 257.710e, the damages were reduced by only 5%.)

The preceding analysis is confirmed by J. Shapero, dissenting, in *Redmond, supra*, * 8. He noted that a civil jury verdict is not enforceable; the judgment dictates the relief granted to the claimant.

> Ultimately, it is the potential relief and not the evidence that limits the district court's jurisdiction. And, it is beyond peradventure that a civil jury verdict is not itself enforceable. No party may use it to compel payment from another. Only the judgment entered by the district court has the power of law and may be enforced. There are many settings in which a jury's verdict is modified by the court prior to entry of judgment. A court may order remittitur, additur, setoffs due to collateral sources, reductions for comparative and third-party fault, and many other potential modifications defined by an applicable statute or rule.

The trial court properly understood that the jury verdict is not dispositive as to the ultimate judgment. Accordingly, the trial court did not abuse its discretion by allowing the jury to review evidence of injuries that sum to more than $25,000, with the judgment constrained to $25,000. This is consistent with statutes on medical malpractice, product liability, and seatbelt use (in reverse). Thus, Plaintiff committed no fraud upon the court by anticipating that "injuries" might be presented to the jury exceeding $25,000 although the judgment must be constrained to $25,000.

3. *Fix v Sissung*, 83 Mich 561, 47 N.W. 340 (1890), does not demonstrate a fraud upon the court.

In the argument within Issue I, *supra*, pp. 21-26, Plaintiff discussed at length the systemic distinction between two situations:

(i) The plaintiff prays for damages under the (maximum) jurisdiction of the district court.

(ii) The plaintiff asserts damages exceeding the (minimum) jurisdiction of the circuit court.

In the first instance, the Plaintiff cannot utter a falsehood. The prayer (or assertion of the amount in controversy) is a self-imposed limitation, binding the plaintiff. He/she, by virtue of the prayer-statement will never achieve a judgment that exceeds $25,000.

In the second circumstance, the statement may be true or false. The circuit court may determine with certainty that the amount in controversy is less than the jurisdictional amount. *E.g.*, the plaintiff may bring suit on an insurance policy with a face value of $10,000 (with no special circumstances). Or, the suit may be for a cracked headlight (transparently not harm exceeding $25,000). The assertion of circuit court jurisdiction is palpably false. Indeed, the plaintiff may be liable for sanctions pursuant to MCR 2.114.

In *Fix v Sissung, supra*, exclusive jurisdiction was conferred upon justices of the peace in civil cases not exceeding $100. The plaintiff brought suit in the circuit court asserting that the gaggle of geese was worth $200, although the geese were worth less than $9! Thus, the *Fix* plaintiff did not self-impose a constraint on his damages. Rather, he asserted an extravagantly high value of damages. This Court held that the circuit court properly denied jurisdiction and characterized the plaintiff's contention as a fraud upon the court. *Fix* is the opposite of this case and presents no support for finding that Plaintiff engaged in a fraud upon the court.

In *Swann v. Mutual Reserve Fund Life Ass'n*, 116 F. 232 (C.C.Ky. 1902), the plaintiff complained that the defendant engaged in misconduct entitling the plaintiff to recover $2,658.92 (for recovery of premiums paid on a policy), although the plaintiff "only claims $1,990 thereof, and only demands judgment for that sum, with interest and costs." *Id.*, 233. The court held, "[I]t does not appear to me that any larger sum than $1,990, * * * can, at this stage of the proceeding, be in controversy or dispute * * *." *Id.*, 233. The federal court noted the defendant's insistence that the decision to claim the lesser amount "was for the sole purpose of preventing a removal to this [federal] court." *Id.* The court held that even if the decision not to claim $2,658.93 was "for the sole purpose of preventing a removal," this did not show "that a fraud was thereby perpetrated upon the jurisdiction of the court." *Id.*

In *F.M.B. v The Mega Life & Health Insurance Co.*, Order (U.S.D.C. S.D. No. 3:08cv530 Miss. 2/18/2009), "The *ad damnum* clause request[ed] actual damages in the amount of $35,000.00 and ... punitive damages in the amount of $35,000 for a total of $70,000.00.'" Additionally, the plaintiff submitted an affidavit that she would not accept more than $75,000 for the damages sustained. After the defendant removed to federal court, the court remanded, "expressly bas[ing] this holding on the conclusion that Plaintiff has bound herself to a total recovery of less than the jurisdictional minimum for this Court." In a footnote citing *Lee v. State Farm Mutual Automobile Insurance Co.*, 360 F.Supp.2d 825, 832-833 (S.D. Miss.2005), the court referred to the possibility of fraud on the court if the

plaintiff later amended its *ad damnum* clause to increase the amount beyond $75,000. The notion of fraud upon the court was raised only in that context.

In *Brady v. Indemnity Ins. Co. of North America, supra*, the plaintiff, a beneficiary of a $15,000 accident policy, sued the insurer but limited his demand to $2,999.99. "The sole question presented on [the] appeal [was] whether a citizen of one state holding a contract of a citizen of another for a specified maximum sum in excess of $3,000 may bring an action on the contract in the state court for $3,000 and defeat removal to the federal court." *Id.*, 303. The federal court held that the plaintiff permissibly understated the claim to avoid federal jurisdiction (taking advantage of Kentucky law on the period of limitations). The court explicitly considered whether the suit for a lower amount constituted a fraud or sham; it was not.

> It was the appellant's right to determine the amount of indemnity she would claim, not the appellee's. When she did so and sued therefor, that amount became the sum or value in controversy. That she claimed a lesser amount than she might have claimed for the purpose of preventing removal is not in our opinion important. She had the right to sue for this lesser amount. * * * **Having the right to determine the amount she would claim, the filing of a suit for such amount in the state court was not in our opinion a fraud on the jurisdiction of the federal court**. [*Id.*, 304; emphasis added.]

Brady facts parallel the facts of this case. On the other hand, *Fix* presents facts opposite to those at hand. Unsurprisingly, the courts reach different conclusions. Where a plaintiff in bad faith makes a false, factual claim that the harm is sufficient to be tried in a court of unlimited jurisdiction, a finding of sham or fraud is fitting, as in *Fix*. On the other hand, the assertion of a lower amount – a legal statement that binds the claimant –

is no sham or fraud, as in *Swann*, *F.M.B.*, and *Brady*. There is no basis for divesting the district court of jurisdiction predicated on a fraud upon the district court, because there was no fraud.

RELIEF REQUESTED

Plaintiff-Appellant respectfully requests that this Honorable Court reverse the decision of the Court of Appeals.

Respectfully submitted,

/s/Richard E. Shaw (P33521)

Attorney for Plaintiff-Appellant
1880 Shepherds Drive
Troy, Michigan 48084
(248) 703-6424

Dated: March 29, 2015